

S.B. NO. 2904

JAN 23 2020

A BILL FOR AN ACT

RELATING TO THE SALE OF TOBACCO PRODUCTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that tobacco use remains
2 the leading cause of preventable disease and death in the United
3 States and in Hawai'i. Tobacco use is a serious public health
4 problem in terms of the human suffering and loss of life it
5 causes, as well as the financial burden it imposes on society
6 and our healthcare system. Annually, \$526,000,000 in health
7 care costs are directly attributed to smoking in the State.

8 The legislature also recognizes that ninety-five per cent
9 of all smokers start before the age of twenty-one. Eighty-one
10 per cent of youth who have ever used a tobacco product report
11 that the first tobacco product they used was flavored. Flavored
12 tobacco products promote youth initiation of tobacco use and
13 help young occasional smokers become daily smokers by reducing
14 or masking the natural harshness and taste of tobacco smoke,
15 thereby increasing the appeal of tobacco products.

16 Menthol, in particular, is used by the tobacco industry
17 because it has a cooling and numbing effect and can reduce the

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1 throat irritation from smoking, thus making menthol cigarettes
2 an appealing option for youth who are initiating tobacco use.
3 Candy and fruit flavors improve the taste and reduce the
4 harshness of tobacco products, making them more appealing and
5 easier for beginners to try tobacco products and ultimately
6 become addicted. The popularity of electronic cigarettes among
7 youth is concerning, as these products contain nicotine. The
8 United States Surgeon General noted in the 2016 report titled
9 "E-Cigarette Use Among Youth and Youth Adults" that "because the
10 adolescent brain is still developing, nicotine use during
11 adolescence can disrupt the formation of brain circuits that
12 control attention, learning, and susceptibility to addiction."

13 The legislature further finds that while there has been a
14 decline in the use of combustible cigarettes over the last
15 decade, there has been a dramatic increase in the use of
16 electronic smoking devices (ESDs) by Hawai'i's youth. Vaping in
17 Hawai'i has reached epidemic levels. Between 2011 to 2015, the
18 proportion of youth experimenting with ESDs increased six-fold
19 among middle school youth and four-fold among high school youth.
20 In 2017, twenty-seven per cent of middle school and forty-two
21 per cent of public high school students tried ESDs. Today,
22 sixteen per cent of middle school and more than a quarter of

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1 high school students vape. Current use of ESDs by county is
2 even more problematic, with figures exceeding thirty per cent on
3 the islands of Hawai'i, Maui, and Kaua'i. These rates are higher
4 than the national average and demonstrate a disturbing trend of
5 youth nicotine use and threaten the historic decline achieved in
6 combustible cigarette use.

7 The legislature further finds that a 2009 federal law, the
8 Family Smoking Prevention and Tobacco Control Act, prohibited
9 characterizing flavors, including fruit and candy flavorings, in
10 cigarettes but did not ban menthol in cigarettes or the use of
11 characterizing flavors in other tobacco products. Only
12 cigarettes, roll-your-own tobacco, and smokeless tobacco are
13 subject to regulation under this Act. The tobacco industry and
14 electronic smoking device industry have since significantly
15 increased the introduction and marketing of flavored non-
16 cigarette tobacco products, especially ESDs. It is no
17 coincidence that the number of electronic cigarette flavors have
18 skyrocketed in recent years, with more than 15,500 unique
19 e-cigarette flavors identified in a 2018 study. Hawai'i has
20 experienced the heightened promotion of vape products that offer
21 candy and local flavors designed to appeal to the State's youth,
22 such as candy, fruit, chocolate, mint, Kona coffee, Maui Mango,

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1 Shaka strawberry, and Moloka'i hot bread. Additionally, many of
2 the packages are designed to look like candies popular with
3 children, such as Jolly Ranchers and Sour Patch Kids. The
4 legislature additionally finds that young people are
5 disproportionately using flavored tobacco products, including
6 menthol. According to the 2010 study Smoking and Tobacco Use in
7 Hawaii, seventy-eight per cent of Native Hawaiian/Pacific
8 Islander adult smokers and forty-two per cent of White adult
9 smokers consume menthol cigarettes. A 2008 study also indicated
10 the high use of menthol cigarettes among Filipino adults.
11 Conservative estimates noted in a 2011 paper suggest that over
12 300,000 deaths can be averted by the year 2050, if menthol
13 cigarette smoking is eliminated.

14 Given the significant threat to public health posed by
15 flavored tobacco products, including menthol, a growing number
16 of jurisdictions, including San Francisco, Berkeley, Chicago,
17 Minneapolis and Providence, Rhode Island, have introduced and
18 passed legislation to regulate the sale of flavored tobacco
19 products. The legislature concludes that Hawai'i should also
20 take steps to regulate these products to reduce tobacco-related
21 health disparities and address the youth vaping epidemic.

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1 Accordingly, the purpose of this Act is to prohibit the
2 sale or distribution of all flavored tobacco products, including
3 products with menthol, in the State of Hawaii.

4 SECTION 2. Chapter 712, Hawaii Revised Statutes, is
5 amended by adding a new section to part IV to be appropriately
6 designated and to read as follows:

7 "§712- Sale of flavored tobacco products. (1)

8 Beginning January 1, 2021, it shall be unlawful for any retailer
9 or any agents or employees of the retailer to:

10 (A) Sell, offer for sale, or possess with the intent to
11 sell or offer for sale, a flavored tobacco product; or

12 (B) Mislabel as nicotine-free, or sell or market for sale
13 as nicotine-free, any e-liquid product which contains
14 nicotine.

15 (2) A statement or claim directed to consumers or the
16 public that the tobacco product has or produces a characterizing
17 flavor, including but not limited to text, color, or images on
18 the tobacco product's labeling or packaging that is used to
19 explicitly or implicitly communicate that the tobacco product
20 has a characterizing flavor made by a manufacturer or an agent
21 or employee of the manufacturer in the course of the person's

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1 agency or employment, is prima facie evidence that the tobacco
2 product is a flavored tobacco product.

3 (3) Any flavored tobacco product found in the retailer's
4 possession that is in violation of this section shall be
5 considered contraband, promptly seized, subject to immediate
6 forfeiture and destruction and shall not be subject to the
7 procedures set forth in chapter 712A.

8 (4) Any retailer and any agents or employees of the
9 retailer who violate this section may be sentenced to a fine not
10 exceeding \$500. Any subsequent offenses shall subject the
11 offender to a fine of not less than \$500 nor more than \$2,000.

12 (5) Notwithstanding any other law to the contrary, any
13 county may adopt a rule or ordinance that places greater
14 restrictions on the access to flavored tobacco products than
15 provided for in this section. In the case of a conflict between
16 the restrictions in this section and any county rule or
17 ordinance regarding access to flavored tobacco products, the
18 more stringent restrictions shall prevail.

19 (6) For the purposes of this section:

20 "Characterizing flavor" means a distinguishable taste or
21 aroma, or both, other than the taste or aroma of tobacco,
22 imparted by a tobacco product or any byproduct produced by the

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1 tobacco product. Characterizing flavors include but are not
2 limited to tastes or aromas relating to any candy, chocolate,
3 vanilla, honey, fruit, cocoa, coffee, dessert, alcoholic
4 beverage, menthol, mint, wintergreen, herb, or spice. A tobacco
5 product shall not be determined to have a characterizing flavor
6 solely because of the use of additives or flavorings or the
7 provision of ingredient information in the absence of a
8 distinguishable taste or aroma, or both.

9 "Cigarette" means any roll for smoking made wholly or in
10 part of tobacco, irrespective of size and shape and whether or
11 not the tobacco is flavored, adulterated, or mixed with any
12 other ingredient, the wrapper or cover of which is made of paper
13 or any other substance or material except tobacco.

14 "Constituent" means any ingredient, substance, chemical, or
15 compound, other than tobacco, water, or reconstituted tobacco
16 sheet, that is added by the manufacturer to a tobacco product
17 during the processing, manufacture, or packing of the tobacco
18 product.

19 "Distinguishable" means perceivable by either the sense of
20 smell or taste.

21 "Electronic smoking device" has the same meaning as defined
22 in section 712-1258(7).

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1 "E-liquid" means any liquid or like substance, which may or
2 may not contain nicotine, that is designed or intended to be
3 used in an electronic smoking device, whether or not packaged in
4 a cartridge or other container. The term "e-liquid" does not
5 include prescription drugs; medical cannabis or manufactured
6 cannabis products; or medical devices used to inhale or ingest
7 prescription drugs, including devices sold at a licensed medical
8 cannabis dispensary.

9 "Entity" means one or more individuals, a company,
10 corporation, a partnership, an association, or any other type of
11 legal entity.

12 "Flavored tobacco product" means any tobacco product that
13 contains a constituent that imparts a characterizing flavor.

14 "Labeling" means written, printed, pictorial, or graphic
15 matter upon a tobacco product or any of its packaging.

16 "Packaging" means a pack, box, carton, or container of any
17 kind, or if no other container, any wrapping, including
18 cellophane, in which a tobacco product is sold or offered for
19 sale to a consumer.

20 "Retailer" means an entity who sells, offers for sale, or
21 exchanges or offers to exchange for any form of consideration

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1 tobacco products to consumers. The term "retailer" includes the
2 owner of a tobacco retail location.

3 "Tobacco product" has the same meaning as defined in
4 section 712-1258(7).

5 "Tobacco retail location" means any premises where tobacco
6 products are sold or distributed to a consumer, including but
7 not limited to any store, bar, lounge, cafe, stand, outlet,
8 vehicle, cart, location, vending machine, or structure."

9 SECTION 3. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 4. If any provision of this Act, or the
13 application thereof to any person or circumstance, is held
14 invalid, the invalidity does not affect other provisions or
15 applications of the Act that can be given effect without the
16 invalid provision or application, and to this end the provisions
17 of this Act are severable.

18 SECTION 5. New statutory material is underscored.

19 SECTION 6. This Act shall take effect on January 1, 2021.

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21

INTRODUCED BY: 

22

BY REQUEST

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Report Title:

Electronic Smoking Devices; Tobacco Products; Underage Sales of Tobacco Products; Penalties

Description:

Establishes a schedule of penalties for employees and holders of retail tobacco permits or persons registered to sell electronic cigarette smoking devices who illegally sell tobacco products and electronic smoking devices to persons under 21. Effective January 1, 2021.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO THE SALE OF TOBACCO PRODUCTS.

PURPOSE: To provide clarity on selling tobacco products and electronic smoking devices to persons under twenty-one years of age.

MEANS: Amend section 712-1258, Hawaii Revised Statutes.

JUSTIFICATION: This measure specifies that retailers of tobacco products and retail tobacco permit holders are subject to penalty provisions for selling tobacco products and electronic smoking devices to persons under twenty-one years of age. Previous wording was ambiguous resulting in frontline employee receiving citation with no repercussions for the retailer.

Impact on the public: This measure will prevent youth and young adults from more easily obtaining tobacco products and electronic smoking devices; 90% of smokers first try cigarettes by age 18; 42% of high school students have tried e-cigarettes.

Impact on the department and other agencies: This proposal will make enforcement simpler because of the additional specificity.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HTH-590.

OTHER AFFECTED AGENCIES: Department of the Attorney General; County Law Enforcement Agencies and Prosecutors.

EFFECTIVE DATE: July 1, 2020.